IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.E.A. No. 45 of 2007

Date of Decision: 4.10.2007

Commissioner of Central Excise Commissionererate, Ludhiana

...Appellant

Versus

M/s Patient Service Centre, Ludhiana

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Gurpreet Singh, Advocate,

for the appellant.

M.M.KUMAR, J.

This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), challenges order dated 30.08.2006, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal') (Annexure P-3), holding that the services rendered by the assessee-respondent do not fall in any of the category specified in the definition of 'Business Auxiliary Service' as per Sub-section 19 of Section 65 of the Finance Act, 1994 (for brevity, 'the Finance Act'). The argument raised by the revenue is that the activity carried out by the assessee-respondent amounted to promotion or marketing of service provided by its principal M/s Speciality Ranbaxy Ltd. (now known as SLR Ranbaxy Ltd.), has been rejected by the Tribunal. The

revenue has claimed that the following substantial question of law would arise for determination of this Court:-

> "Whether the Hon'ble Tribunal is correct in holding that the services rendered by the respondents do not fall under any category specified in the definition of 'Business Auxiliary Service' and is within the scope of "Technical Test and Analysis Services" and whether service tax is payable on such services."

After hearing learned counsel for the appellant-revenue and perusing the record we find that the matter is not *res integra*. Similar question of law came up for our consideration in the case of **Commissioner of Central Excise Commissionerate, Ludhiana v. M/s Dr. Lal Path Lab (P) Ltd. Collection Centre, Ludhiana (CEA No. 48 of 2007, decided on 14.9.2007)** and the same has already been answered against the appellant-revenue. Even the facts of the instant case are also similar to the case of M/s Dr. Lal Path Lab (P) Ltd. (supra) wherein we have observed as under:-

> " Having heard the learned counsel and closely perusing the order passed by the Tribunal, we are of the considered view that this appeal is liable to be dismissed because in pith and substance, the activity of the assessee-respondent is confined to a collection centre with facilities and trained employees for drawal of blood samples and to carry out essential processing (serum separation) of blood and forwarding the samples

to the principal lab at Delhi through courier. The collection centres are also responsible for disposal of waste arising in the process. The case of the assessee-respondent appears to be covered by the exception postulated by sub Section 106 of Section 65, which defines the expression 'technical testing and analysis'. The provision is reproduced hereunder for facility of reference:-

> " "technical testing and analysis" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals;
>
> [Explanation: For the removal of doubts, it is hereby declared that for the purposes of this clause, "technical testing and analysis" includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals;]"

A perusal of the aforementioned provision makes it clear that the expression 'technical testing and analysis' does not include any testing or analysis service provided

> in relation to human being or animals. The explanation goes to the extent of excluding from the aforementioned definition, a testing or analysis for the purposes of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals. Such being the statutory provision, we do not entertain any doubt that merely because any incidental service is rendered by the assessee-respondent like putting across or dropping of the name of the principal company, it would become part of the definition of 'Business Auxiliary Service' within the meaning of Section 65 (19) (ii) of the Act. The view taken by the Tribunal is unassailable and deserves to be upheld."

In view of above, instant appeal is dismissed being squarely covered by our judgment in the case of M/s Dr. Lal Path Lab (P) Ltd. (supra).

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 4, 2007

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